

(26,479)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 102.

THE CUYAHOGA RIVER POWER COMPANY, APPELLANT,

vs.

THE NORTHERN OHIO TRACTION AND LIGHT COMPANY
AND THE NORTHERN OHIO POWER COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF OHIO.

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1 District Court of the United States, Northern District of Ohio,
Eastern Division.

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,

against

THE NORTHERN OHIO TRACTION AND LIGHT COMPANY and THE
NORTHERN OHIO POWER COMPANY, Defendants.

Bill of Complaint.

To the Honorable the Judges of the District Court of the United
States for the Northern District of Ohio, Eastern Division, in
Equity Sitting:

The above-named plaintiff, a corporation duly organized and exist-
ing under the laws of the State of Ohio and a citizen of said State
and an inhabitant of the Northern District of Ohio, brings this its
bill of complaint in equity against the above-named defendants, each
of which is a corporation organized and existing under the laws of
the State of Ohio and a citizen of said State having its principal office
in and being an inhabitant of the Northern District of Ohio;
2 and said plaintiff thereupon shows unto the Court and, upon
information and belief, alleges:

First. The names, citizenship and residences of the parties to this
bill are as set forth in the introduction to this bill; and this suit arises
under the Constitution and laws of the United States, and the matter
in controversy herein exceeds, exclusive of interest and costs, the
sum or value of \$3,000; and the jurisdiction of this Court in this
cause depends upon the fact that this suit is a controversy of a civil
nature that arises under the Constitution and laws of the United
States.

Second. The plaintiff is an existing hydro-electric power company
duly incorporated under the laws of the State of Ohio on May 29,
1908, for the purpose specified in an act of the Legislature of that
State passed in the year 1904 and now contained in Sections 10,128
to 10,134 of the Ohio General Code of 1910.

The articles of incorporation of the plaintiff, filed with the Secre-
tary of State on May 29, 1908, specify that the stream across which
the dams to be built and maintained by it should be the Big Cuya-
hoga River, and that the improvement to be constructed by said com-
pany should begin at the confluence of the Big Cuyahoga River and
the Little Cuyahoga River below the City of Akron, Summit County,
Ohio, and extend along said Big Cuyahoga River through the County
of Summit to a point where said Big Cuyahoga River crosses the line
between Summit and Portage Counties.

Third. By said incorporation a contract was duly made and entered into between the State of Ohio and the plaintiff wherein
3 and whereby said State duly granted to the plaintiff a right of way over and along said Cuyahoga River between the above-mentioned termini and a vested right and franchise to construct, maintain, and operate, within the limits of said right of way, a hydro-electric plant for the development of electrical current and energy from the waters of said river, together with the right or franchise of exercising the State's power of eminent domain in order to appropriate and acquire all property necessary to carry out and perform said grant and make the same effective. Said grant never has been repealed by the State and is still in full force and effect.

Fourth. The right of way and franchises aforesaid were duly accepted by the plaintiff on and prior to June 4, 1908, and were and are of great value; and upon the faith thereof the capital stock of the plaintiff was subscribed and paid for and the plaintiff made large expenditures and investments and incurred large obligations, including notes and bonds of the par value of \$150,000, and stock of the par value of \$210,000. Said subscriptions, expenditures and investments were made and said obligations were incurred in large part prior to December, 1910.

Fifth. On June 4, 1908, the plaintiff, by its duly elected Board of Directors, adopted a specific and detailed plan for the development of hydro-electric power from the waters of the Cuyahoga River and the sale of the same to the public, and definitely located its proposed improvement for that purpose upon specifically described parcels
4 of land previously entered upon and surveyed by its engineers; and it then and there determined, declared, and resolved that said parcels of land were necessary and essential in order to carry out the purpose of its organization, and that the plaintiff thereby appropriated and condemned for its corporate purpose all the real property set forth and described in said resolution. A copy of said resolution is hereto annexed marked Exhibit A and hereby made a part of this bill. The parcels of land described in said resolution include all the parcels necessary to be acquired in order to construct and maintain the improvement specified in the plaintiff's said charter and resolution; and the location of said improvement so fixed by said resolution was permanent and irrevocable and conclusive upon the plaintiff and all other persons except as the same might be altered or amended by further act of the State.

Sixth. The forty-acre parcel of land mentioned in said resolution, Exhibit A, as being property then owned by Henry A. Everett and The Northern Ohio Traction & Light Company, (hereinafter called the Everett Parcel) consists of the bed and banks of the Cuyahoga River for a distance of about a mile and a half at the lower end of the plaintiff's said right of way and is an undivided portion of several larger tracts, aggregating about 170 acres, that were conveyed to said Everett by the Executors of one Jeremiah Milbank by deed dated December 14, 1897, and duly recorded in Summit County,

5 Ohio. Said deed is absolute in form and conveys a fee simple title; but certain persons connected with or interested in said Northern Ohio Traction & Light Company were asserting and claiming at the time of the adoption of said resolution that said Traction Company had some interest in said land by virtue of some agreement with said Everett.

The three-tenths of an acre parcel mentioned in said resolution as property then owned by The Akron, Bedford, and Cleveland Railroad Company and The Northern Ohio Traction & Light Company (hereinafter called the A. B. & C. Parcel) is likewise a part of the bed and banks of the Cuyahoga River at the lower end of the plaintiff's said right of way. It is a part of certain lands once owned by the Akron, Bedford & Cleveland Railroad Company and included in a deed from The Northern Ohio Traction Company to The Northern Ohio Traction and Light Company dated December 29, 1902.

The lands mentioned in said resolution as property then owned by Fannie V. Sackett (hereinafter collectively called the Sackett Parcel) are likewise a part of the bed and banks of the Cuyahoga River at the lower end of the plaintiff's said right of way, and were in fact then owned by said Fannie V. Sackett in fee simple.

Said Everett parcel and said A B & C parcel and said Sackett parcel are situated down-stream from the dams proposed to be erected by the plaintiff and are so situated that the improvement provided for in the plaintiff's charter and resolution cannot be constructed without a taking thereof by the plaintiff.

No part of either of said parcels is situated within the limits of any municipality.

6 Seventh. On June 5, 1908, the plaintiff duly instituted in the Probate Court of Summit County, Ohio, a court of competent jurisdiction in that behalf, a suit to condemn or appropriate, in accordance with the statutes of Ohio, the parcels of land mentioned and described in said resolution, Exhibit A, and procured the summonses in said suit to be served upon the defendants therein, including said Akron, Bedford and Cleveland Railroad Company, said Fannie V. Sackett, said Henry A. Everett, who was alleged to be the owner of said Everett parcel, and said Northern Ohio Traction & Light Company, one of the defendants herein, which was made a party as a person owning or claiming to own some interest in the property sought to be condemned.

Said appropriation suit was continuously pending until a date subsequent to July 18, 1911; but at the special instance and request of said Everett and said Northern Ohio Traction & Light Company (hereinafter called Traction Company), it was not pressed for trial as against them until January, 1911, up to which date the plaintiff and said Everett and said Traction Company were carrying on negotiations with respect to the plaintiff's acquisition of said Everett parcel by contract, which negotiations involved, also, various propositions as to the making of long term contracts under which the plaintiff would construct its proposed improvement in accordance with the plan adopted by it and furnish to said Traction Company a portion

of the power to be developed by the plaintiff. Said negotiations were prolonged and difficult and were finally terminated by the refusal of said Everett and said Traction Company to sell the land to the plaintiff.

Eighth. On or about the 20th day of December, 1910, while said appropriation suit was pending undetermined and before the termination of the negotiations aforesaid, said Henry A. Everett executed and delivered a deed to The Northern Realty Company (a corporation incorporated under the laws of Ohio in November, 1909, for the sole purpose of buying, selling, exchanging and generally dealing in real properties, and maintaining a general real estate agency), whereby he conveyed to said Realty Company the several tracts of land that had been conveyed to him by said Milbank's Executors. Said deed conveys to said Realty Company an absolute fee simple title to the land therein described, and provides:

"To have and to hold the premises aforesaid, with the appurtenances thereunto belonging, to the said grantee, its successors and assigns, so that neither the said grantor nor his heirs, nor any other persons claiming title through or under him, shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they and every one of them shall by these presents be excluded and forever barred."

Said deed was received for record in the office of the County Recorder of Summit County, Ohio, on December 22, 1910, and was actually recorded therein on January 10, 1911.

Ninth. On January 20, 1911, after unsuccessful negotiations with said Realty Company for the purchase of said land, the plaintiff duly instituted in said Probate Court another suit to condemn or appropriate said Everett parcel and said A, B and C parcel, in which suit the sole defendant was said Realty Company. The summons therein was duly served, and since the date last mentioned said suit has been vigorously and diligently prosecuted and has been continuously pending, either in said Probate Court or upon a petition in error, and is now pending in the Supreme Court of the United States undetermined. Said suit was carried to said Supreme Court by means of a writ of error from that court to the Court of Appeals of the State of Ohio, Eighth District, which writ was allowed by one of the Justices of said Supreme Court.

Tenth. On January 31, 1911, after the summons in said last-named suit had been served and while said suit was still pending and undetermined, said Realty Company conveyed to the defendant The Northern Ohio Power Company a portion of the land conveyed by said Everett to said Realty Company as above set forth.

On July 18, 1911, said Northern Ohio Power Company purchased from said Fannie V. Sackett and said Fannie V. Sackett conveyed to said Northern Ohio Power Company the whole or a portion of said Sackett parcel hereinabove mentioned.

On February 24, 1914, while said appropriation suit was still

pending undetermined, said Northern Ohio Power Company sold and conveyed all its property, rights, and franchises, including said Everett and Sackett parcels, to the defendant Traction Company, and said last-named defendant thereupon entered upon and took
9 and now holds possession of said land and of the improvements thereon erected.

Said last-mentioned sale and conveyance was made under color of and pursuant to an authority claimed to be contained in an order made by the Public Utilities Commission of Ohio, which order is dated February 19, 1914, and was made upon a joint petition presented to said Commission by said Traction Company and said Northern Ohio Power Company. A copy of said petition and a copy of said order are hereto annexed, marked Exhibits B and C respectively, and hereby made a part of this bill.

Eleventh. Neither the deed mentioned in Paragraph Eighth hereof, nor the deed from Milbank's Executors to Henry A. Everett hereinabove mentioned, specifically described said Everett parcel or separated or set apart said parcel from the larger tracts mentioned in said deeds within the boundaries of which said parcel is included; and neither the defendants herein nor any other person or corporation had, at any time prior to January 20, 1911, made upon said Everett parcel or said Sackett parcel or said A, B & C parcel any location of any proposed improvement or structure for utilizing said parcels in the development of power, or obtained any grant therefor from the State of Ohio; and at all times prior to January 31, 1911, said Sackett parcel and said A, B & C parcel and said Everett parcel were each and all vacant and unimproved and were actually employed in no use and for no purpose whatsoever, except that
10 upon one of the tracts within the boundaries of which said Everett parcel is included there was a small inexpensive wooden structure intended and occasionally used for dancing and rolling skating, a small portion of which structure was within the boundaries of said Everett parcel.

Twelfth. Subsequent to January 20, 1911, and between January 31, 1911, and February 24, 1914, there was erected upon a portion of the lands conveyed by Milbank's Executors to Everett, and upon other lands adjacent thereto, including said Sackett parcel and said A, B & C parcel, a powerhouse with boilers, condensers, engines, tanks and other appliances for the generation of electric current and energy by means of steam power produced by the use of coal as a fuel, and also a dam, power-house, and other appliances for the generation of electrical current and energy by means of water power produced by the flow and fall of the waters of the Cuyahoga River over and along said Everett, Sackett, and A, B & C parcels. These structures are hereinafter designated as the "steam power plant" and as the "hydro-electric plant," respectively. Said dam is located wholly within the boundaries of said Everett parcel and the remainder of said hydro-electric plant is within the boundaries of said Sackett parcel and is inseparably connected therewith and uses the same and the waters of said river appurtenant thereto. A por-

tion of the foundations of said steam power-house are within the boundaries of said Everett parcel, and said steam power-house is also connected with the Cuyahoga River by means of pipes that are laid underground from the power-house across the Everett parcel

- 11 to the river, through which pipes the water of the river is pumped to the boilers of the steam power-house for use in the generation of steam.

The buildings of said steam power plant occupy a space 150 by 330 feet. In connection therewith there are coal bins having a capacity of upwards of 7,000 tons of coal.

Said steam power plant has a normal capacity of 31,000 horse power and a maximum capacity of about 83,000 horse power. Said hydro-electric plant has a capacity of 2,750 horse power during a period of about seven months during each year and is incapable of operation during the remainder of each year, owing to the fact that sufficient storage reservoirs have not been and can not be provided at that point of the river alone without the utilization of other parcels within the right of way of the plaintiff.

Thirteenth. Long prior to the defendant Traction Company's said purchase of the property, rights and franchises of the defendant Northern Ohio Power Company and prior to the execution of the deeds from said Realty Company and said Fannie V. Sackett to said Northern Ohio Power Company and of said deed from said Everett to said Realty Company, respectively, said Traction Company and said Northern Ohio Power Company and said Realty Company, each and all, had notice and actual knowledge of the State's grant to the plaintiff of the right of way mentioned in Paragraph Third hereof and of the plaintiff's locations hereinabove mentioned and of its plans and proposed plant and, also, of the plaintiff's selection of, location upon, and determination to acquire

- 12 said Everett, Sackett and A, B and C parcels, and of the necessity of said three parcels to the plaintiff in the construction and operation of its proposed plant.

Such notice and actual knowledge was conveyed to and acquired by the defendant Traction Company as early as June 5, 1908, and has been possessed by the defendant Power Company from the time of its incorporation; and all the acts performed by said companies with respect to said three parcels since June 5, 1908, have been performed with notice and knowledge of all said rights and franchises of the plaintiff, and have been performed wrongfully and in bad faith with the knowledge that such acts would embarrass, hinder, and delay the plaintiff and interfere with its exercise of its rights, and with the intent that such acts should have that effect.

Fourteenth. The defendant Northern Ohio Power Company claims and purports to be an existing corporation incorporated under the laws of Ohio on January 31, 1911, for the purpose specified in Sections 10,128 to 10,134 of the Ohio General Code of 1910, by the filing of articles of incorporation with the Secretary of State of Ohio. Said articles, so filed on or about January 31, 1911, specify the Cuyahoga River as the stream across which it would erect a

dam and further state that the proposed improvement to be erected by said company would have its termini in the Counties of Cuyahoga and Tuscarawas and that its main line and branches would pass in and through the Counties of Cuyahoga, Summit, Medina, Portage, Stark and Tuscarawas, in the State of Ohio.

Said defendant is not and never was engaged in any business except that it constructed the power plants mentioned in Paragraph Twelfth hereof, and conveyed the same to the defendant Traction Company immediately upon their completion; and, as above set forth, it has conveyed all its rights, property and franchises to said Traction Company.

The plaintiff charges and alleges that, insofar as the location of the proposed improvements specified in the articles of incorporation of said Northern Ohio Power Company conflicts with the location of the plaintiff's improvement as specified and set forth in the plaintiff's articles of incorporation, such articles of incorporation of the Northern Ohio Power Company are absolutely null and void because of such conflict; and by reason thereof said Northern Ohio Power Company never obtained any valid grant from the State of any right or franchise to use said Everett, Sackett and A, B & C parcels, or any of them, or the waters of the Cuyahoga River appurtenant thereto, for the development of hydro-electric power or any other public use, and hence could not have sold or conveyed any such right or franchise to the defendant Traction Company.

The defendant Traction Company is an interurban and street railway company incorporated under the laws of the State of Ohio by the filing of articles of incorporation on or about the 24th day of November, 1902. The purpose of said company as stated in its articles of incorporation is as follows:

14 "Said corporation is formed for the purpose of purchasing, acquiring, building, extending, leasing, equipping, owning, operating and maintaining street railroads, using other than animal power as a motive power for the transportation of passengers, packages, express matter, United States mail, baggage and freight, in the streets, avenues, public-ways and places in the City of Akron, Summit County, Ohio, in the Village of Barberton in said Summit County, Ohio, in the Village of Cuyahoga Falls, in said Summit County, Ohio, in the Village of Doylestown in Wayne County, Ohio, in the Village of Wadsworth in Medina County, Ohio, in the Village of Ravenna in Portage County, Ohio, in the City of Cleveland in Cuyahoga County, Ohio, and in any or all other villages, cities or municipalities in said Counties of Medina, Wayne, Summit, Portage and Cuyahoga and in any or all counties in the State of Ohio, adjacent to said above mentioned counties or any of them, and in and upon any and all highways in said counties outside of the municipalities therein, and upon private rights of way in said counties, or either upon such highways or such private rights of way, and connecting by said street railroads any or all of the cities, villages and municipalities in said counties as well as the street railroads in such cities, villages and municipalities with each other to the end that said street railroads may be constructed, acquired, maintained and operated in

or through such cities, villages, municipalities and counties, or any of them, as a continuous system of street railroad; and to appropriate, condemn, acquire and own rights of way and necessary ground; and to do all things and have all powers, rights, franchises and
15 privileges conferred upon corporations organized for the purpose herein stated, by the Laws of the State of Ohio, and in connection with the foregoing purposes, and, as incident thereto, the manufacturing and generating of electricity for light, heat and power."

Said articles do not set forth any termini of any improvement the construction of which is included in the purpose for which said company was incorporated.

On or about the 29th day of December, 1902, said Traction Company purchased from The Northern Ohio Traction Company (a then existing interurban and street railway company formed by the consolidation of two other then existing companies having corporate powers similar to those of said defendant), various parcels of land in Summit and adjoining counties, and also certain electric street railroad lines in and along certain streets of the City of Akron, certain interurban railroad lines between Barberton and Kent, and all the other corporate property, real and personal, of said The Northern Ohio Traction Company, including depots, yards, shops and power houses.

Since the date aforesaid said Traction Company has been and now is engaged in the business of operating said lines of railway, with certain additions thereto, in, through and between the City of Cleveland, the City of Akron, the Villages of Kent, Barberton, Ravenna, and other villages and towns in the vicinity of the cities and villages above named.

Up to the year 1914, the power used by said Traction Company in the conduct of its business was obtained from at least
16 five different power houses located at various different places, including the Cities and Villages of Akron, Bedford, Cuyahoga Falls, Silver Lake Junction, Canton and Massillon, all which power houses used steam and not water power for the generation of electricity. Since said Traction Company's purchase from said Northern Ohio Power Company as hereinabove set forth it has been and is now using in its business the power generated at the steam power plant and hydro-electric power plant mentioned in Paragraph Twelfth hereof.

The action of said defendant in abandoning the power houses previously used by it and in purchasing and using the power plants mentioned in Paragraph Twelfth hereof was entirely voluntary upon its part and was not the result of any requirement of law or any public authority and was solely for its own convenience and benefit.

There is nothing in the nature of the business of the defendant Traction Company, or in the character of the country through which it operates its road and carries on its business, which makes it necessary for said defendant to own, possess or control said Everett, Sackett and A, B & C parcels, or any of them, or to obtain power from the power plants now erected thereon; and there are numerous other sites and places, including among numerous others, the sites of its abandoned power houses above mentioned, where said defendant could

have and can now locate any and all power houses necessary for its business; and said defendant can carry on its business and perform its duties to the public with equal dispatch and efficiency whether it obtain its electrical current and energy from the power plants
17 now situated upon said Everett, Sackett and A, B & C parcels or from other power plants situated outside the limits of the right of way of the plaintiff.

Fifteenth. No deed, lease, agreement, or other writing of any kind whereby the defendant Traction Company was vested with the ownership of the land conveyed to said Everett by Milbank's Executors as herein alleged, or with the ownership of any estate or interest in or lien upon or right or claim against said land, was ever recorded in the office of the County Recorder of the county wherein said land is situated or in any other public office; and the plaintiff charges and alleges that said Traction Company never was the owner of said Everett parcel or of any estate or interest therein or of any lien thereon at any time prior to its purchase of the same from said Northern Ohio Power Company on February 24, 1914, as hereinabove set forth.

The plaintiff further charges and alleges that if any such deed, lease, agreement, or other writing was ever made, the estate or interest so vested in said Traction Company was terminated and divested by said Everett's conveyance to The Northern Realty Company in December, 1910, as hereinabove set forth.

The plaintiff further charges and alleges that if said Everett parcel or any estate or interest in or lien upon said Everett parcel was ever owned by said defendant Traction Company, the same was null and void and of no effect as against the plaintiff.

The plaintiff further charges and alleges that neither said Realty Company nor said Traction Company was organized for the
18 purpose specified in the statute mentioned in Paragraph Second hereof, and that neither of said companies ever had any corporate power or authority to construct, maintain, or operate the steam power plant and hydro-electric plant mentioned in Paragraph Twelfth hereof, or any right or franchise to use said Everett, Sackett, and A, B & C parcels, or any of them, or the waters of the Cuyahoga River appurtenant thereto, for the development of hydro-electric power or any other public use.

Sixteenth. The plaintiff further charges and alleges that said Traction Company has not and never has had any corporate power or authority or any right or franchise to exercise the power of eminent domain for the purpose of acquiring power houses or the lands necessary therefor, except that said Traction Company has the power to appropriate land for an extension of an existing power house located within the limits of a municipality; and that said Traction Company's use of said Everett, Sackett, and A, B & C parcels, and each of them, is and always has been a private use and not a public use.

Seventeenth. The defendant Traction Company claims and asserts that all its acts with reference to the acquisition and use of said

Everett, Sackett, and A, B & C parcels, and of the waters of the Cuyahoga River appurtenant thereto, have been and are being taken and had pursuant to and in the rightful exercise of rights, powers and franchises duly granted to and conferred upon it by the State of Ohio, including the franchise claimed to have been granted to

19 The Northern Ohio Power Company by the incorporation of said company and claimed to have been purchased by the Traction Company as above set forth; that it is a public service corporation of the State of Ohio; that its use in its business of the electrical current and energy produced by its utilization of said Everett, Sackett and A, B & C parcels and of said waters appurtenant thereto, is a public use and constitutes a devotion of said parcels and waters to a public use under due authority from the State of Ohio, including said alleged franchise of said Northern Ohio Power Company, and that for that reason said parcels and said waters cannot be taken or appropriated by the plaintiff; and under this assertion and claim of statutory right and under an assertion of power from the State and under color of authority of state laws said Traction Company has entered upon and taken possession of said Everett, Sackett, and A, B & C parcels, and has commenced and is now continuing and threatens and intends to continue to use said parcels and said waters for the use and purpose aforesaid; all in direct violation and disregard of the rights, powers, privileges and franchises of the plaintiff hereinabove set forth and to the great injury and damage and impairment thereof.

Said Traction Company has further announced and is giving it out to the public that it is about to build further additional structures involving a further and more extensive use of said Everett, Sackett, and A, B & C parcels, and of the waters of said river appurtenant thereto, and is about to spend many thousand of dollars for that purpose. To this end said Traction Company, in the month

20 of June, 1916, presented to the Public Utilities Commission of Ohio a verified petition wherein it prayed for the consent and authority of said Commission to issue and sell \$2,053,000 par value of its First Lien and Refunding Mortgage Five Per Cent. Bonds and apply the proceeds thereof to the payment of the cost of certain improvements, betterments, and additions, a large portion of which involve an additional and more extensive use of the structures now upon said Everett, Sackett and A, B & C parcels. The prayer of said petition was granted, in part, by said Commission by an order dated July 21, 1916, a copy of which is hereto annexed marked Exhibit D and hereby made a part of this bill; and said Traction Company now asserts and claims the legal right and authority to issue the bonds authorized by said order, Exhibit D, and to make the same a lien upon the Everett, Sackett and A, B & C parcels and to make such additional use of said parcels; all in total disregard of and to the great injury and impairment of the rights and franchises of the plaintiff therein.

Eighteenth. The defendants' use of said Everett, Sackett and A, B & C parcels and of the waters of the Cuyahoga River appurtenant thereto in the manner and for the purpose herein set forth, makes

it impossible for the plaintiff to occupy its right of way or exercise its franchise or carry on its corporate purpose or attain its corporate objects or take advantage of or use the parcels of land in and to and against which it has acquired rights as herein set forth; and if the defendants continue their said use of said parcels, the State's grant and command to the plaintiff to develop hydro-electric power from the waters of said river will be nullified, the right of way and
 21 other property, rights, powers, privileges and franchises so granted to, acquired by, and vested in the plaintiff as hereinabove alleged, will be permanently appropriated to the use of the defendants, and will be thereby impaired, injured, damaged, destroyed and rendered useless and valueless, to the great and irreparable injury of the plaintiff, its stockholders and creditors; and unless the defendants be enjoined and restrained by this Court, they will continue said use of said parcels and of the waters of the Cuyahoga River appurtenant thereto and will thereby cause and inflict upon the plaintiff and the persons interested therein a continuing, permanent and irreparable injury, for which there is no adequate remedy at law.

Nineteenth. From and after the time of the adoption by the plaintiff of said resolution, Exhibit A, the parcels of land described therein were and have been subjected to its public use, and ever since that time they have been and now are legally and equitably subject to the plaintiff's right of way and franchise aforesaid, which right of way and franchise were and are exclusive as against all other persons and corporations, and legally and equitably free from the interference of any person or corporation; and the plaintiff has a prior and superior right to said parcels of land and a prior right and franchise over every person and corporation to appropriate and use said lands for its public use and an exclusive location and an exclusive franchise for the purpose of utilizing said lands for its corporate purpose. Said right of way and franchise were granted to the
 22 plaintiff by the State of Ohio under and by virtue of its said contract with said State, and said right of way and franchise were and are contract and property rights in the possession and use and enjoyment of which the plaintiff is entitled to and claims the protection of the Constitution of the United States and of the amendments thereof, as well as of Section 5 of Article XIII of the Constitution of the State of Ohio.

The effect and result of the defendants' use of said Everett, Sackett and A, B & C parcels and of the waters of the Cuyahoga River appurtenant thereto, is to oust the plaintiff of its right of way aforesaid and deprive it of its said right of way and franchise; and the defendants' said use of said parcels and of the waters appurtenant thereto amounts to and is an appropriation to the defendants' use of the said right of way of the plaintiff within the meaning of Section 5 of Article XIII of the Constitution of the State of Ohio, and also amounts to and is a taking and deprivation of its property for a private use and without compensation and without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, and also an impairment of the contract of the

plaintiff with the State of Ohio within the meaning of Section 11 of Article I of said Constitution of the United States.

Neither of the defendants has paid or offered to pay nor taken any steps or proceeding to assess any compensation for such appropriation, taking, and deprivation; but, on the contrary, claim and assert the right to so use said Everett, Sackett, and A, B & C parcels and

23 the plaintiff and without the payment of compensation therefor; and said claim and assertion of right by said defendants and their said use of said parcels and waters is a cloud upon the title of the plaintiff to its right of way and franchise and a nuisance and a continuing trespass upon and permanent interference with said right of way and franchise.

Twentieth. At all times since its incorporation the plaintiff has been and now is actively and diligently and in good faith engaged in the prosecution of its corporate business and in proceeding to carry out and accomplish its corporate purpose. It has acquired the absolute ownership of various parcels of land necessary for the construction of its improvement and has binding and existing option for the purchase of other essential parcels; and the only reasons why it has not yet acquired all the lands and water rights necessary to enable it to commence and complete the physical construction of its plant are that it has been prevented by the illegal interference of the defendants and the immense amount of litigation in which it has become involved.

Twenty-First. In April, 1909, the plaintiff duly amended the plan of development adopted by it in June, 1908, as hereinabove alleged, so as to extend and enlarge its proposed plant and the output and product thereof, and in January, 1912, the plaintiff duly obtained a grant from the State of Ohio for a right of way over an additional portion or section of the Cuyahoga river so as to carry out such amended plan. Such amended plan provides for the utilization of

24 said Everett, Sackett, and A, B & C parcels, and said parcels are necessary to the use and exercise of the plaintiff's franchise as extended. Under said amended plan and extended franchise the plaintiff if undisturbed in the due, proper and legal exercise and use thereof, could and would produce and sell hydro-electric power to the extent of not less than 20,327 electric horse power for continuous service, ten hours daily, or a net delivery of 52,560,000 kilowatt hours; and by charging fair and reasonable rates for the service rendered by the plaintiff to the public in producing and furnishing such power, the plaintiff could and would earn and receive a net income of at least \$30,000 per month over and above all expenses and a reasonable percentage upon the value of the physical properties constituting the plant or improvement necessary to develop and sell such power and a reasonable percentage for depreciation in the value of such physical properties; and the reasonable earning capacity and the reasonable usable value of the plaintiff's said franchise has been and is \$30,000 per month at the least; and the natural, ordinary, and necessary effect and consequence of the act

of the defendants herein complained of has been and is and, until enjoined, will continue to be the exclusion of the plaintiff from the use and exercise of its said franchise; and by reason of such wrongful exclusion from the use and exercise of its franchise the plaintiff has already suffered damages in excess of \$1,980,000, no part of which has been paid, and unless the defendants be enjoined the plaintiff will continue to suffer damages at the rate of at least \$30,000 per month, to recover which, as and when entitled thereto, the plaintiff would be compelled to institute and prosecute, at great
25 expense and with great vexation, delay, and hazard, a multiplicity of suits at law, which, by the principles of equity, it should not be compelled to do.

Twenty-second. By reason of the premises, the right of way granted to the plaintiff by the State of Ohio is being appropriated to the use of the defendants for a private use and without the payment, assessment or securing of any compensation therefor, in contravention and violation of Section 5 of Article 13 of the Constitution of the State of Ohio, and the obligations of the plaintiff's contracts with the State of Ohio herein set forth are being impaired by laws of said State and the acts and doings of the defendants under color of authority of such laws and under an assertion of power from the State; all in contravention and in violation of Section 10 of Article I of the Constitution of the United States. In like manner and by like means the plaintiff's property is being taken and the plaintiff is being deprived of its property without due process of law and without compensation; all in contravention and in violation of the Fourteenth Amendment to the Constitution of the United States; and the plaintiff invokes the jurisdiction of this Court upon those grounds for the purpose of enforcing its rights under said Constitution and the amendments thereof.

Forasmuch, therefore, as the plaintiff is without remedy save in this Court, sitting in equity, it therefore prays:

1. That The Northern Ohio Traction and Light Company, and
26 The Northern Ohio Power Company be made parties defendant to this bill of complaint and required to answer the same, but not under oath, an answer under oath being hereby expressly waived.
2. That the plaintiff's contracts with the State of Ohio hereinabove alleged, and the right of way and other property, rights, powers, privileges and franchises of the plaintiff hereinabove set forth, be established and adjudged by decrees of this Court.
3. That the various acts and proceedings hereinabove complained of as violating the plaintiff's rights under the Constitution of Ohio and the Constitution of the United States and the amendments thereof, and the statutes and laws under color of which the defendants are doing said acts and taking said proceedings, be adjudged and declared unconstitutional and void, because resulting in an impairment of the obligations of the plaintiff's said contracts with the State and in a taking of the plaintiff's property without due process of law.

4. That the defendants herein, their officers, attorneys, agents, servants, workmen and contractors, and all persons, firms, corporations and officers whatsoever be forever enjoined and restrained from in any way appropriating, trespassing upon, interfering with, or impairing or injuring the right of way or any other of the property, rights, powers, privileges and franchises of the plaintiff; and, in particular, that said defendants and all such other persons be forever enjoined and restrained (a) from using the parcels of land mentioned in Paragraph Sixth hereof, or any structures erected thereon, or the waters of the Cuyahoga River which flow to, over and from said parcels, for the purpose of developing, generating, or producing light, heat, or power, (b) from using said parcels or structures or taking or diverting or appropriating all or any part of the waters of the Cuyahoga River or its tributaries at any point or for any purpose which would in any way injure or affect the property, rights, powers, privileges and franchises of the plaintiff or in any manner interfere with the plaintiff's possession and use of its said right of way or with the prompt and proper prosecution of the plans of development adopted by the plaintiff as set forth in this bill; (c) from asserting or claiming that the defendants' use of said parcels, structures, and waters is a public use or constitutes a devotion of said parcels to a public use, or in any other manner clouding the title of the plaintiff to its right of way and franchises; (d) from in any manner or by any means interfering with the plaintiff's exercise of its corporate rights, powers and franchises, including its right to acquire, by an exercise of the power of eminent domain, the absolute title to and ownership of said parcels or the right to control, diminish and absolutely prevent the flow of any water of the Cuyahoga River to or over the same; (e) from erecting additional structures or improvements upon said Everett, Sackett and A, B & C parcels of land, or any of them, or placing any lien or encumbrance thereon under color of authority of the order of the Public Utilities Commission set forth in Paragraph Seventeenth hereof.
5. That a preliminary injunction in accordance with the last preceding prayer be forthwith granted pending the hearing and determination of this suit to continue in force during the pendency of this suit and until the granting of a permanent injunction in accordance with the said last preceding prayer.
6. That the defendants be required and compelled, by mandatory injunction or other suitable process of the Court, to remove such structures and devices as have been already erected upon said parcels, or to grant and convey such structures and devices to the plaintiff for use by it in connection with its said rights and franchises.
7. That a Receiver be appointed forthwith to take possession of the structures and devices erected and constructed upon said parcels as herein alleged and to hold the same and all matters and things incidental thereto and connected therewith, in order that the same may be applied and disposed of in accordance with the decree of this Court to be entered herein.

8. That, as incidental to such relief, the defendants be decreed to account for and pay over to the plaintiff the damages occasioned to it by their violations and takings of the right of way, property, rights, powers, privileges and franchises of the plaintiff down to the time of the issue of the injunction prayed for herein; and that such damages be assessed by this Court upon the entry of the decree herein.

9. That the plaintiff have all such other, further, different and general relief as may be proper and just in the premises.

10. That the plaintiff have writs of injunction and a receiver in conformity with the prayers of this bill; that all proper orders and decrees be entered herein, all proper inquiries made, accounts taken and proceedings had, in conformity with law and the practice of this Court; and that the plaintiff have a writ of subpoena directed to the defendants commanding them to appear and answer this bill of complaint and abide and perform all such orders and decrees as to the Court shall seem proper and as may be required by the principles of equity; and the plaintiff will ever pray.

THE CUYAHOGA RIVER POWER
COMPANY,

By WILLIAM Z. DAVIS,

Its Solicitor.

JOHN L. WELLS,
CARROLL G. WALTER,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Willard R. Kimball, being duly sworn, deposes and says: That he is an officer of the plaintiff named in the foregoing bill of complaint, to wit, the president thereof; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the reason this verification is made by him instead of by the plaintiff is that the plaintiff is a corporation, and that the sources of his information and the grounds of his belief are facts which have come to his knowledge in the course of his duties as president of the plaintiff.

WILLARD R. KIMBALL.

Sworn to before me this 4th day of August, 1916.

THOMAS ROBINSON,
Notary Public, Bronx County.

Cert. filed in New York County, No. 221.

EXHIBIT A.

Resolution of June 4, 1908.

Whereas, This company has attempted to purchase various pieces of real estate and property hereinafter described, and has made offers of purchase prices and compensation to the several owners and claimants of said property, respectively, but has been unable to agree with said owners and claimants as to the amount to be paid for said real estate and property;

And, Whereas, It is necessary and essential in order to carry out the purposes of its organization, that this company acquire said various pieces of real estate and property and for the purpose of acquiring, erecting, building, maintaining and operating a system of dams in the Big Cuyahoga River in the State of Ohio; of raising and maintaining a head of water; of constructing and maintaining canals, locks and raceways; of regulating and carrying said head of water to its plants or power houses where electricity is to be generated; of erecting and maintaining a line or lines of poles whereon to attach or string wires or cables to carry and transmit electricity; of acquiring, producing, manufacturing, generating and selling electricity for light, heat, power and other purposes; of acquiring, holding and selling franchises and privileges and supplying the same to municipal corporations; of acquiring by lease, purchase or otherwise, and possessing, holding and selling such real estate and personal property as may be necessary for the proper conduct of said business, and to do any and all other things necessary and incident to any of its said purposes;

Now, therefore, be it Resolved, That it is necessary and essential, for the purposes aforesaid, to appropriate and condemn, and this company does hereby appropriate and condemn, each and all of the following described real property and estate for the uses and purposes aforesaid:

The property now owned by Henry A. Everett and The Northern Ohio Traction & Light Company, lying and being in Cuyahoga Falls Township, Summit County, Ohio, and described as follows:

Beginning at the point of intersection of the center of the Cuyahoga River and the North and South Township line between Portage Township and Cuyahoga Falls Township; thence north 0 degrees, 30 minutes east 100 feet; thence easterly and southeasterly along the northerly bank of said Cuyahoga River 100 feet distant from the center line of said River, following the meandering of the same, to a point on the line between the property of said Henry A. Everett and the property of the A. B. & C. R. R. Company, said point being 100 feet distant from the center of the Cuyahoga River, measured at right angles with the same; thence south 1 degree, 20 minutes west along said line between the property of Henry A. Everett and the property of the A. B. & C. R. R. Company to the southwest corner of the property of said A. B. & C. R. R. Company; thence south 88 degrees east along the south line of the property of the A. B. & C. R. R. Company, said line being the dividing

line between the property of the A. B. & C. R. R. Company and the property of Henry A. Everett, to a point 100 feet distant from the center of the Cuyahoga River, measured at right angles with the same; thence southeasterly and northeasterly along the northerly bank of the Cuyahoga River 100 feet distant from the center line thereof, and following the meanderings of the same, to a point on a line of the land of said Henry A. Everett, said line being an extension northerly of the east line of Tract No. 3 Portage Township, Summit County, Ohio, and also being 100 feet distant from the center of the Cuyahoga River, measured at right angles with the same; thence northerly along said line to a stone pipe; thence northerly along the high bank of the Cuyahoga River and one rod westerly of same the following courses and distances: North 34 degrees, 35 minutes east 264 feet; thence north 27 degrees, 35 minutes east 286.44 feet; thence north 2 degrees, 30 minutes west 116.16 feet; thence north 24 degrees, 10 minutes west 138 feet; thence north 8 degrees, 40 minutes east 107.6 feet; thence north 19 degrees, 31 minutes east 108.24 feet; thence north 36 degrees; 40 minutes east 168.3 feet; thence north 53 degrees, 40 minutes east 454.7 feet; thence north 35 degrees east 280.7 feet to the northeast corner of the lot owned by Tom Patterson; thence northerly following along the westerly bank of said Cuyahoga River to the southeast corner of the property of the Falls Rivet & Machine Company; thence along the line between the land of the Fall Rivet & Machine Company and the property of Henry A. Everett to a point on the westerly bank of said River, where said boundary line crosses said River; thence south 75 degrees east 157 feet along the line between the property of The Falls Rivet & Machine Company and the lands of said Henry A. Everett to a point on the top of the bank of the easterly side of said Cuyahoga River; thence south 23 degrees west 118.80 feet along the top of said east bank; thence south 63 degrees east 52 feet to the west line of Water Street, where an iron grate bar is set; thence south 22 degrees, 30 minutes west 660 feet along the west line of Water Street to an iron pin; thence south 17 degrees, 30 minutes west 663.34 feet along the west side of Water Street to an iron pin; thence north 63 degrees, 37 minutes west 128.4 feet along north line of land formerly belonging to C. S. Sill to an iron pipe; thence south 31 degrees, 30 minutes west 317.46 feet along the west line of the same land to an iron pipe; thence south 41 degrees, 30 minutes west 341.88 feet along the west line of said Sill's land to an iron pipe; thence southerly and westerly along the southerly bank of the said Cuyahoga River and approximately 100 feet distant from the center line of said River, following the meanderings of same to a point on the north and south township line between Portage Township and Cuyahoga Falls township; thence north 0 degrees, 30 minutes east along said township line 100 feet to the place of beginning; containing 40 acres, more or less, with all the privileges, easements, rights and appurtenances thereunto belonging.

Also the property now owned by The Akron, Bedford and Cleveland Railroad Company and The Northern Ohio Traction & Light

Company in Cuyahoga Falls Township, Summit County, Ohio, and described as follows:

Beginning at an iron pin at the southwest corner of said Railroad Company's land, said pin being on an island in the Cuyahoga River; thence north 1 degree, 20 minutes east along said Railroad Company's west line to a point 100 feet distant from the center of the Cuyahoga River, measured at right angles with the same; thence southeasterly to the south line of said Railroad Company's property at a point 100 feet distant from the center of the Cuyahoga River, measured at right angles with same; thence along the south line of said Railroad Company's land to the place beginning; containing 0.3 acres, more or less, with all the privileges, easements, rights and appurtenances thereunto belonging, all of the above property being in the Township of Cuyahoga Falls.

Also the property now owned by The Turner, Vaughn & Taylor Company in the village of Cuyahoga Falls, Summit County, Ohio, and described as follows:

Beginning at the intersection of the westerly high bank of the Cuyahoga River, and the north line of Portage Street in the Village of Cuyahoga Falls, Summit County, Ohio; thence westerly along the north line of Portage Street 49½ feet; thence southerly
35 across said Portage Street to the south line of the same; thence easterly along the south line of said Portage Street 49½ feet to the said westerly high bank of the Cuyahoga River; thence southerly along the high bank of the Cuyahoga River on the westerly side thereof and following the meanderings of same, across Broad Street in said Village of Cuyahoga Falls, Summit County, Ohio, to the dividing line between the property of said Turner, Vaughn & Taylor Company and the property of The Walsh Paper Company; thence easterly across the Cuyahoga River to the southeast corner of the property of said Turner, Vaughn & Taylor Company on the easterly high bank of said Cuyahoga River; thence northerly along the high bank of said Cuyahoga River on the easterly side thereof and following the meanderings of the same across Board Street in said Village of Cuyahoga Falls, and across Portage Street also in said Village of Cuyahoga Falls, to the northerly line of said Portage Street; thence westerly along the north line of said street to the place of beginning; containing approximately 6.3 acres, more or less, with all the privileges, rights, easements and appurtenances thereunto belonging.

Also the property now owned by Cornelius M. Walsh and The Walsh Milling Company in the Village of Cuyahoga Falls, Summit County, Ohio, and described as follows:

Parcel No. 1 (Walsh Milling Co.).

Beginning at the intersection of the center of the Cuyahoga River at the north side of Portage Street in the Village of Cuyahoga Falls, Summit County, Ohio; thence westerly along the north side of
36 Portage Street to the intersection of the high bank of the west side of the Cuyahoga River and the north side of Portage

Street; thence northerly along the said high bank on the westerly side of the Cuyahoga River to a point 30 feet north of the crest of the dam, as now located, of the Walsh Milling Company; thence easterly to the center of the Cuyahoga River to a point approximately 30 feet north of the crest of the aforesaid dam; thence southerly along the center of the Cuyahoga River to the place of beginning; containing approximately 0.5 acres, with all the privileges, rights, assessments and appurtenances thereunto belonging.

Parcel No. 2.

Beginning at a point in the center of Prospect Street in the Village of Cuyahoga Falls, Summit County, Ohio, on the high bank of the Cuyahoga River on the easterly side thereof; thence westerly along the center of said Prospect Street to the high bank on the westerly side of said River; thence northerly along the high bank of said river to the north line of said C. N. Walsh's property where same joins the property of the Walsh Paper Company; thence easterly, following the said north line of C. M. Walsh's property across the Cuyahoga River to the high bank on the easterly side of same; thence southerly along the high bank of the easterly side of said Cuyahoga River to the place of beginning; containing 0.9 acres, more or less, with all the privileges, rights, easements and appurtenances thereunto belonging.

Also the property now owned by The Walsh Paper Company and Cornelius M. Walsh, in the Village of Cuyahoga Falls, Summit County, Ohio, and described as follows:

37 Beginning at the intersection of the Westerly High bank of the Cuyahoga River in the Village of Cuyahoga Falls, Summit County, Ohio, and the dividing line between the property of said Walsh Paper Company and the property of Turner, Vaughn & Taylor Company; thence Southerly along the high bank of the Cuyahoga River on the Westerly side thereof and following the meanderings of same, to the line between the property of the said Walsh Paper Company and the property of C. M. Walsh; thence Easterly across the Cuyahoga River to the Southeast corner of the property of said Walsh Paper Company, said corner being on the Easterly high bank of said River; thence Northerly along the high bank of said River on the Easterly side thereof and following the meanderings of same to the Southeast corner of the property of Turner, Vaughn & Taylor Company, said corner being also the dividing line between the property of Turner, Vaughn & Taylor Company and the said Walsh Paper Company; thence Westerly across the Cuyahoga River to the place of beginning. Containing approximately 0.8 acres, more or less, with all the privileges, easements, rights and appurtenances thereunto belonging.

Also the property now owned by The Falls Rivet & Machine Company, in the Village of Cuyahoga Falls, Summit County, Ohio, and described as follows:

Parcel No. 1.

Beginning at the point of intersection of the center of the Cuyahoga River and the North line of Portage Street, in the Village of Cuyahoga Falls, Summit County, Ohio; thence Northerly
 38 along the center of said River to a point approximately 30 feet North of the crest of the Walsh Milling Company's dam, as now located; thence Easterly to a point on the high bank of the Cuyahoga River on the Easterly side thereof, said point being approximately 30 feet North of the crest of the aforesaid Walsh Milling Company's dam; thence Southerly along the high bank on the Easterly side of the Cuyahoga River to the North line of Portage Street; thence Westerly along the North line of Portage Street to the place of beginning. Containing approximately 0.4 acres more or less with all privileges, rights, easements and appurtenances thereunto belonging.

Parcel No. 2.

Beginning at a point on the Westerly bank of the Cuyahoga River, said point being north $34^{\circ} 35'$ East 380.16 feet, and North 32° East 89.1 feet from a stone set in the North line of Chestnut Street in the Village of Cuyahoga Falls, Summit County, Ohio, both of these lines being along lines of land owned by the heirs of J. Millbank; thence in a line which passes through a recess which is cut into a large rock near the East edge of the water of the Cuyahoga River to receive the end of the timber of the "Chuckery" dam, and through a point on the West side of the gorge South of the husk of wheel house, which point is about 24 feet South of a mark cut in the perpendicular rock on said West side near the bottom by F. D. Paul and G. B. Turner, the East end of said line being on the top of the East bank of the river; thence north 31 degrees, 45 minutes east 237.6 feet; thence north 10 degrees east 258.72 feet; thence north 14 degrees east 178.21 feet; thence north 80 degrees 45
 39 minutes west 99 feet along the south line of the Cyrus Prentiss tract. The west end of this line may also be found by beginning in the east line of Front Street, 1.69 chains north 9 degrees, 15 minutes east of the first angle in the east line of said Front Street south of Broad Street, and which line is also 21 links south of the center line of Prospect Street; thence along the easterly line of land belonging to Fannie S. Beebe to the southeasterly corner of her land; thence along the southerly line of said Fannie S. Beebe's land one rod; thence in a southerly direction to a point one rod westerly from the place of beginning; thence one rod east to place of beginning; containing approximately 1.5 acres, more or less, with all the privileges, rights, easements and appurtenances thereunto belonging.

Also the property now owned by Fannie V. Sackett, in Portage Township, Summit County, Ohio, and described as follows:

Parcel One.

Being a part of tract two in Portage Township, Summit County, State of Ohio, and is a part of a tract of 120.79 acres of land and marked and distinguished, upon the map of the property sold under the decree in the case of John J. Palmer v. The Portage Canal & Manufacturing Company et al., in the Court of Common Pleas, Summit County and State of Ohio, and being a part of a parcel of land now known as the George Sackett land and bounded as follows:

Commencing at a point in the center of the Cuyahoga River at its intersection with the township line between Portage Township and the Village of Cuyahoga Falls; thence northerly along said Township line 100 feet; thence following the northerly bank of said River in a westerly direction approximately 100 feet distant from the center of said river, and following the meanderings thereof to the westerly line of the said George Sackett property; thence southerly on the extreme westerly line of the said George Sackett property to a point 100 feet from the center of said river on the southerly bank thereof; thence easterly along the southerly bank of said river, and following the meanderings thereof, approximately 100 feet distant from the center thereof to the township line on the easterly side of Portage Township; thence northerly along said Township line to the place of beginning; containing about ten acres, with all the privileges, rights, easements and appurtenances thereunto belonging.

Parcel Two.

Being a part of said tract two, Portage Township, County and State as above, and being the water power of the Cuyahoga River, and the rights, privileges, easements and rights of way and appurtenances attached to a tract of 97.40 acres of land in said tract two, which tract includes the 55 acres above described and 42.40 acres of land lying westerly therefrom, which were reserved in a deed from George Sackett and wife to Michel Metzler, Jr., recorded in Vol. 101, page 205, Summit County Records, and consisting of the right to take and conduct the waters of the Cuyahoga River over and across said granted premises at such times, and in such quantities, and in such manner as he may choose.

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Parcel Three.

Situated in the Township of Portage, County of Summit and State of Ohio, and known as being the right and privilege of using, controlling, diverting and conveying the water power and water of the Cuyahoga River as the same now flows or hereafter may flow over and across the lands owned by William J. Babb and Eliza K. Babb, his wife; L. S. Fowler and Lucretia M. Fowler, his wife; Jacob Schenck and Frederica Schenck, his wife, on the 25th day of October, 1892, in Tracts Nos. one, two and four of said Township of Portage; it being expressly understood that none of the land of this afore-

said parcel shall be occupied or used for dams or other structures, and no land except the use of that over which the waters of the said Cuyahoga River flow, and for the purposes aforesaid, intending hereby to acquire all the lands, rights, interests, easements and appurtenances conveyed to said George Sackett by the above mentioned parties by deed of date of Oct. 25th, 1892, and recorded in Vol. 184, page 191, of Summit County Records.

Parcel Four.

Situated in the Township of Portage, County and State aforesaid, and known as being a part of tract 4 in said Township and bounded and described as follows: being a strip of land forty (40) feet in width beginning where the line fence between John Abele's land and Nolte's land intersects the tract line; thence Southerly along the line of said Nolte to the Soap Works property and thence Westerly along the line of said Soap Works property to the Cuyahoga River together with the right to control, use and divert the water of the Cuyahoga River flowing along, across or through the land of said Abele, to such uses or purposes and in such manner as the grantee, his heirs or assigns may desire. The said strip of land containing about one and $1\frac{1}{4}$ acres of land, with all the rights, privileges, easements and appurtenances thereunto belonging.

The above parcel of land and the rights, privileges, easements and appurtenances thereunto belonging includes all the rights, privileges, easements and interests conveyed to the grantor by John Abele and Agatha Abele by deed dated April 3rd, 1901, and recorded in Vol. —, page —, of the Summit County Records, and the same is made subject to all the conditions of the aforesaid deed.

Also the property now owned by Henry A. Robinson, in Portage Township, Summit County, Ohio, and described as follows:

Situated in the City of Akron, formerly Township of Portage, County of Summit and State of Ohio and known as a part of tract No. 4 and also a part of 37.54 acres deeded to Edward Roepke by Joseph Babb by deed recorded in Summit County Records Book 109, page 580. Beginning at a stake which may be found by commencing in the center of the public road and running North $34^{\circ} 45'$ West about 273 feet along the East line of the private road 12 feet wide to a stake which is the beginning point of the land hereby conveyed: thence North $17^{\circ} 45'$ East 240 feet to a stake; thence North $49^{\circ} 45'$ West 180 feet to a stake; thence South $11^{\circ} 20'$ West 200 feet to a stake; thence $34^{\circ} 45'$ East along East line of said private road 12 feet wide 180 feet to the beginning.

Also beginning at the same beginning point and running South $17^{\circ} 45'$ West 115 feet to the center of the Cuyahoga River, thence up the center of river North $24^{\circ} 15'$ West 201.50 feet; thence North $11^{\circ} 20'$ East 75 feet to the most Westerly corner of the first described piece of land; thence South $34^{\circ} 45'$ East 180 feet to the beginning and containing 1.04 acres in both parcels. The private road herein mentioned is to be kept open for the use and benefit of Edward Roepke and The Akron Soap Company and said Roepke and those holding through or under them.

The above described premises are also subject to the following conditions contained in the conveyance from Edward Roepke and wife to The Akron Soap Company dated July 23rd, 1892, and recorded in Book 197 on page 289 of Summit County Records.

Also the property now owned by Hattie Adelle Fenton and Luna Alice Dover in the Village of Cuyahoga Falls, Summit County, Ohio, and described as follows:

Being a piece of land on the west bank of the Cuyahoga River, bounded on the north by Bridge Street, on the east by the Cuyahoga River, on the south by land of S. Croy and on the west by land of Loomis, being 0.67 acres, with the right of passage westerly to Front Street; with all the privileges, easements, rights and appurtenances thereunto belonging.

And be it Further Resolved, That proceedings be immediately instituted in a court of competent jurisdiction in Summit County, Ohio, to assess the compensation to be paid for the said property and real estate to the respective owners thereof.

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EXHIBIT B.

Joint Petition of the Northern Ohio Traction & Light Company and The Northern Ohio Power Company to the Public Utilities Commission of Ohio.

Petitioners in this their joint petition say that they are each corporations organized and existing under and by virtue of the laws of State of Ohio; that each has its principal place of business at Akron, Summit County, Ohio; that said The Northern Ohio Traction and Light Company is formed for the purpose of purchasing, acquiring, building, extending, leasing, equipping, owning, operating and maintaining street railroads, using other than animal power as a motive power for the transportation of passengers, packages, express matter, United States mail, baggage and freight, in the streets, avenues, public ways and places in the City of Akron, Summit County, Ohio, in the Village of Cuyahoga Falls, in said Summit County, Ohio, in the Village of Barberton in said Summit County, Ohio, in the Village of Doylestown, Wayne County, Ohio, in the Village of Wadsworth in Medina County, Ohio, in the Village of Ravenna, in Portage County, Ohio, in the City of Cleveland in Cuyahoga County, Ohio, and in any or all other villages, cities or municipalities in said counties of Medina, Wayne, Summit, Portage and Cuyahoga and in any or all counties in the State of Ohio adjacent to said above-mentioned counties or any of them, and in and upon any and all highways in said counties outside of the municipalities therein,

45 and upon private rights of way in said counties, or either upon such highways or such private rights of way, and connecting by said street railroads any or all the cities, villages and municipalities in said counties, as well as the street railroads in such cities, villages and municipalities with each other, to the end that

said street railroads may be constructed, acquired, maintained and operated in or through such cities, villages, municipalities and counties, or any of them, as a continuous system of street railroad; and to appropriate, condemn, acquire, and own rights of way and necessary ground; and to do all things and have all powers, rights, franchises and privileges conferred upon corporations organized for the purpose herein stated, by the laws of the State of Ohio, and in connection with the foregoing purposes, and, as incident thereto, the manufacturing and generating of electricity for light, heat and power; that said The Northern Ohio Power Company is formed for the purpose of acquiring, erecting, building, maintaining and operating a dam or series of dams in the Cuyahoga River, Summit County, in the State of Ohio, to raise and maintain a head of water, of constructing and maintaining canals, locks and race ways to regulate and carry said head of water to any plant or power house where electricity is to be generated; of using said water as power in generating and producing electricity; of constructing, erecting and maintaining tubes, pipes or conduits through which electricity may be carried and transmitted, and a line or lines of poles whereon to attach or string

46 wires or cables to carry and transmit electricity; of acquiring, producing, manufacturing, generating, transmitting and selling electricity for light, heat, power and other purposes; of supplying and selling electricity to municipalities, interurban, street and electric railroad companies and other public agencies; of acquiring, holding and selling franchises and privileges to supply the same to municipal corporations; of acquiring by condemnation, lease, purchase or otherwise, and of possessing, holding and selling such real estate and personal property as may be necessary or convenient for the proper conduct of said business, and of doing any and all other things necessary and incident to any of said purposes. The improvement said company will construct not to be located at a single place will be for the purpose of transmitting and conducting electricity and will have its termini the counties of Cuyahoga and Tuscarawas and with its main line and branches will pass in or through the counties of Cuyahoga, Summit, Medina, Portage, Stark and Tuscarawas, in said state.

Petitioners further say that said The Northern Ohio Power Company owns the legal title to a certain tract of land situated in Cuyahoga Falls and Portage Townships in said Summit County, through which tract of land flows the Big Cuyahoga River; that said Power Company has developed the fall of said River for the purposes for which said Power Company was formed, and has erected therein a dam, and has constructed on said tract of land a steam power plant and a hydro-electric plant; that said Power Company owns in connection therewith the legal title to certain tracts of land used

47 as rights of way for transmission lines, and has erected thereon poles and wires and other structures incident thereto, and said Power Company owns the legal title to parcels of land other than those above mentioned; that said Power Company never has,

and is not now engaged in business, and has no contracts for supplying electricity to any person or persons, firms, corporations or municipalities other than with said The Northern Ohio Traction & Light Company.

Petitioners further say that said The Northern Ohio Traction & Light Company owns and operates street, interurban and suburban railways, and has entered into contracts with individuals, firms, corporations and municipalities for furnishing electricity for light, heat and power purposes; that all of said property of said Power Company is necessary for the uses and purposes of said Traction Company, and that it is necessary for said Traction Company to acquire said property to properly carry on the purposes and objects for which said Traction Company was formed, and to carry out and perform its contracts and duties as a public utility, and that it is necessary for said purposes for said Traction Company to acquire all of the property, franchises, rights and privileges of said Power Company.

Petitioners further say that said The Northern Ohio Traction and Light Company has advanced and paid all of the moneys necessary for the acquisition and development of said Power Company's property, including said dam, power houses, transmission lines, and all of the structures and equipments thereof and incident thereto, and that said Power Company is now indebted to said Traction Company approximately in the sum of One Million, Nine Hundred Seventy-nine Thousand, Five Hundred Forty-nine and 68/100 (1,979,549.68) Dollars; that said Power Company is unable to further finance, extend and develop its properties, and is unable to pay in cash or acceptable securities said sum so owing to The Northern Ohio Traction & Light Company; that said Power Company has no other indebtedness of any kind or character.

Said petitioners further say that said Power Company has proposed to said Traction Company to sell all of the property, franchises, rights and privileges of said Power Company to said Traction Company for and in consideration of said Traction Company cancelling said indebtedness and releasing said Power Company from all of its said obligation and indebtedness to said Traction Company; that the Directors of said Companies respectively unanimously authorized the execution of said sale, prescribing the terms, considerations and conditions thereof, as above set forth; that the Directors of said Companies respectively, on proper notice according to law, called a meeting of the stockholders of each of said Companies for the purpose of assenting to said proposal of sale, and that at said meetings of said stockholders the holders of more than two-thirds of the stock of each Company assented thereto.

Wherefore petitioners pray that this Commission, if it deem the same necessary, fix a time and place for the hearing hereon; that

49 this Commission consent to and approve said sale, and make such order in the premises as it may deem proper and the circumstances require.

THE NORTHERN OHIO POWER
COMPANY,

(Signed) By C. H. HOWLAND,
Its President.

(Signed) T. W. WAKEMAN,
Its Secretary.

THE NORTHERN OHIO TRACTION
& LIGHT COMPANY,

(Signed) By HENRY A. EVERETT,
Its President

(Signed) CHARLES F. MOORE,
Its Secretary.

STATE OF OHIO,
Summit County, ss:

Charles H. Howland and T. W. Wakeman, being severally sworn, on their oath say that they are President and Secretary respectively of said The Northern Ohio Power Company, and that the facts, statements and averments contained in the foregoing joint petition of said The Northern Ohio Power Company and The Northern Ohio Traction & Light Company, are true, as they verily believe.

(Signed) C. H. HOWLAND,
*President of The Northern Ohio
Power Company.*

(Signed) T. W. WAKEMAN,
*Secretary of The Northern Ohio
Power Company.*

50 Sworn to before me by the said Charles H. Howland and T. W. Wakeman, and by them subscriber in my presence this 27th day of January, A. D. 1914.

(Signed) N. O. MATHER,
[SEAL.] *Notary Public.*

STATE OF OHIO,
Summit County, ss:

Henry A. Everett, being first duly sworn, upon his oath says that he is the President of The Northern Ohio Traction & Light Company, and that the facts, statements and averments contained in the foregoing joint petition of said The Northern Ohio Power and said The Northern Ohio Traction & Light Company are true, as he verily believes.

(Signed) HENRY A. EVERETT,
*President of The Northern Ohio
Traction & Light Company.*

Sworn to before me by the said Henry A. Everett and by him
subscribed in my presence this 27th day of January, A. D. 1914.

(Signed)

N. O. MATHER,

[SEAL.]

Notary Public.

STATE OF OHIO,

Summit County, ss:

Charles F. Moore, being duly sworn, upon his oath says that he
is Secretary of The Northern Ohio Traction & Light Com-
pany, and that the facts, statements and averments contained
in the foregoing joint petition of said The Northern Ohio
Power Company and said The Northern Ohio Traction & Light
Company, are true, as he verily believes.

(Signed)

CHARLES F. MOORE,
*Secretary of The Northern Ohio
Traction & Light Company.*

Sworn to before me by the said Charles F. Moore, and by him
(Signed)

N. O. MATHER,

[SEAL.]

Notary Public.

subscribed in my presence this 27th day of January, A. D. 1914.

ROWLEY, MATHER & EAGLESON,

Attorneys.

52

EXHIBIT C.

Before the Public Utilities Commission of Ohio.

No. 116.

In the Matter of the Joint Application of THE NORTHERN OHIO
TRACTION AND LIGHT COMPANY and THE NORTHERN OHIO POWER
COMPANY for the Consent and Approval of the Commission to the
Purchase and Sale of Property.

The Northern Ohio Traction and Light Company and The North-
ern Ohio Power Company, corporations organized under the laws of
the State of Ohio, with their offices and principal places of business
located at Akron, Summit County, Ohio, having, on the thirtieth
day of January, 1914, filed their joint petition praying for the con-
sent and approval of the Commission to the sale, by said The North-
ern Ohio Power Company to said The Northern Ohio Traction and
Light Company, of all the property, franchises, rights and privileges
of said The Northern Ohio Power Company, as fully set out in said
petition, and the time for hearing said matter having been fixed for
Friday, February thirteenth, 1914, at nine o'clock a. m., and hav-
ing been heard in said day and the further consideration
thereof continued from day to day, the same came on this
day for final consideration upon the petition, the evidence
and exhibits.

53

After considering the pleadings, hearing the evidence and examining the exhibits, and being fully advised in the premises, and it appearing that the consummation of said proposed transfer of property will conserve the economical operation of the same, and it appearing further that the service furnished the public by said The Northern Ohio Traction and Light Company will be improved thereby, and that the public will be furnished adequate service for a reasonable and just charge, rate, rental or toll, and that no diminution of service or increase in rates will result therefrom, the Commission is satisfied that the prayer of said petition should be granted. It is therefore,

Ordered, That said The Northern Ohio Power Company be and it is hereby authorized to sell and transfer to said The Northern Ohio Traction and Light Company, all its property, franchises, rights and privileges, consisting of the legal title to a certain tract of land situated in Cuyahoga Falls and Portage Townships in Summit County, through which tract of land flows the Big Cuyahoga River, the dam erected therein and the steam power plant and hydro-electric plant erected on said land; the legal title to certain tracts of land used as rights of way for transmission lines and the poles, wires and other structures erected thereon, as fully set out in said petition, which is hereby made a part of this order by reference, for and in consideration of said The Northern Ohio Traction and Light Company cancelling the indebtedness of said The Northern Ohio Power

Company to said The Northern Ohio Traction and Light
54 Company created and incurred by the said The Northern Ohio Traction and Light Company advancing and paying all of the moneys necessary for the acquisition and development of said The Northern Ohio Power Company's property, which said indebtedness amounts to the approximate sum of One Million, Nine Hundred and Seventy-nine Thousand, Five Hundred and Forty-nine Dollars and Sixty-eight Cents (\$1,979,549.68); and said The Northern Ohio Traction and Light Company is hereby authorized to purchase said property for and in consideration of the cancellation and release of said The Northern Ohio Power Company from all of its said indebtedness and obligations to said The Northern Ohio Traction and Light Company. It is further

Ordered, That the authority herein granted may be exercised from and after the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF OHIO.

O. H. HUGHES, *Chairman*;
C. C. MARSHALL,
E. W. DOTY,

Commissioners.

[SEAL.]

Dated at Columbus, Ohio, this nineteenth day of February, 1914

EXHIBIT D.

Before the Public Utilities Commission of Ohio.

No. 872.

In the Matter of the Application of THE NORTHERN OHIO TRACTION AND LIGHT COMPANY for Consent and Authority to Issue and Sell its First Lien and Refunding Mortgage Five Per Cent. Bonds.

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Northern Ohio Traction and Light Company, a corporation organized under the laws of the State of Ohio, for consent and authority to issue its First Lien and Refunding Mortgage, five per cent. Bonds of the total principal sum of Fourteen Million and Seventy-five Thousand Dollars, the proceeds from Four Million Dollars, principal sum thereof, to be used to pay \$1,800,000.00 of six per cent. Collateral Trust Notes issued August 1, 1913, and July 1, 1915, to pay certain underlying First Mortgage Bonds of the Tuscarawas Railroad Company, of the principal sum of \$100,000.00, which matured June 1, 1916, to pay bonds of the Lake View Land and Improvement Company, of the principal sum of \$47,000.00 which matured July 1, 1916, and to be applied toward the payment of the cost of making certain betterments, additions and improvements to applicant's property and railway, and Ten Million and Seventy-five Thousand Dollars, principal sum thereof, deposited with the trustee under said mortgage in pursuance of a plan whereby, for all underlying five per cent. bonds now outstanding, that may be acquired and surrendered to applicant, on or before July 1, 1918, the trustee may deliver a like amount of First Lien and Refunding Mortgage Bonds and, in addition, the applicant may, at its option, make a cash payment of not exceeding \$70.00 for each underlying bond so surrendered, and such underlying four per cent. bonds as may be acquired and surrendered to applicant, on or before said date, may be taken up by the applicant company upon a five per cent. income basis, the trustee to exchange therefor a like par amount of said First Lien and Refunding Mortgage five per cent. Bonds against payment to the applicant at par and interest, less a discount at a rate of not exceeding \$70.00 for each \$1,000.00 bond; and it appearing to the Commission that the issue of said bonds is reasonably required for the discharge or lawful refunding of applicant's obligations, and for the construction, completion, extension and improvement of its facilities, and the maintenance and improvement of its service, the Commission is satisfied that its consent and authority for the issue of said bonds should be granted. It is, therefore,

Ordered, That said The Northern Ohio Traction and Light Company be, and it hereby is authorized to issue its First Lien and Refunding Mortgage five per cent. Bonds of the total principal sum of Fourteen Million and Seventy-five Thousand Dollars (\$14,-

075,000.00), and that Four Million Dollars (\$4,000,000.00), principal sum, of said bonds be sold for the highest price obtainable, but for not less than eighty-eight and one-half ($88\frac{1}{2}$) percentum of the par value thereof. It is further

Ordered, That \$10,075,000.00 principal sum, of said bonds be deposited with the trustee under said mortgage, in pursuance of the plan whereby for all underlying five per cent. bonds now outstanding, that may be acquired and surrendered to the applicant on or before July 1, 1918, there may be delivered by the trustee a like amount of First Lien and Refunding Mortgage Bonds and, in addition, the applicant company may, at its option, make a cash payment of not exceeding \$70.00 for each underlying bond so surrendered and, such underlying four per cent. bonds as may be acquired and surrendered to the applicant on or before said date may be taken up by the applicant upon a five per cent. income basis the trustee to exchange therefor a like par amount of said First Lien and Refunding Mortgage five per cent. Bonds against payment to the applicant at par and interest, less a discount at the rate of not exceeding \$70.00 for each \$1,000.00 bond. It is further

Ordered, That in case of the failure by applicant to make such exchange for its underlying bonds, it be, and hereby is authorized, on or before July first, 1918, to sell said bonds for the highest price obtainable, but for not less than ninety-three (93) percentum of the par value thereof, and apply the proceeds thereof to the payment and discharge of said underlying bonds at par. It is further

Ordered, That the proceeds arising from the sale of the \$4,000,000.00 bonds, herein authorized to be sold, be devoted to and used for the following purposes, and no others, to-wit:

(a) The payment and discharge of the \$1,800,000.00, principal sum of six per cent. Collateral Trust Notes, now outstanding, of the issues of August 1, 1913, and July 1, 1915.

(b) The payment of the \$100,000.00 First Mortgage Bonds of the Tuscarawas Railroad Company, which matured June 1, 1916.

(c) The payment of the \$47,000.00 bonds of the Lake View Land and Improvement Company, which matured July 1, 1916.

(d) The balance of such proceeds to be applied to the payment for the additions, extensions and improvements to applicant's property and facilities, of the total estimated cost of \$2,019,000.00, as more fully set out in a detailed statement, as amended, marked "Exhibit B", attached to the application herein, which "Exhibit B" hereby is made a part of this order by reference. It is further

Ordered, That the \$51,000.00 discount arising from the sale of applicant's collateral trust notes of the principal sum of \$500,000.00, authorized July 27, 1915, by the order in proceeding No. 555 before this Commission, forthwith be charged to applicant's profit and loss or surplus account. It is further

Ordered, That the sum of \$126,480.00 (being discount capitalized under authority of the order of this Commission in said proceeding No. 555), forthwith be charged to surplus account and credited to applicant's road and equipment account. It is further

Ordered, That the \$51,000.00 discount arising from the sale of preferred capital stock under authority of the order of this Commission in proceeding No. 752, be charged to profit and loss account at the close of the present fiscal year. It is further

Ordered, That the discount and expense arising from and incident to the sale of the bonds herein authorized to be sold, and the discount and expense arising from and incident to the refunding of any of the \$10,075,000.00 outstanding prior lien obligations, be amortized pursuant to the provisions of the system of accounting adopted and prescribed by this Commission. It is further

Ordered, That the applicant's underlying securities, following: Held in escrow, \$3,100,000.00; deposited as collateral, \$2,300,000.00, and held in treasury, \$290,000.00, totalling the principal sum of \$5,690,000.00, be used for collateral purposes only and shall be cancelled and discharged at or before the date, or dates, of maturity thereof. It is further

60 Ordered, That the applicant credit to road and equipment account the following:

Discount on The Northern Ohio Traction and Light	
Company bonds, 1902-3-4	\$232,000.00
Discount on The Canton-Akron Consolidated Railway	
Company, bonds 1906	25,000.00
	<hr/>
	\$257,000.00

and charge the same to its surplus account. It is further

Ordered, That applicant make verified report to this Commission semi-annually, within thirty days after June thirtieth and December thirty-first, of each year, of the issue and disposition of the bonds herein authorized, the expenditure of the proceeds of such bonds as are sold, the progress of the amortization of the discounts and expenses arising therefrom, the Cancellation or destruction of retired securities, and compliance with the other requirements of this order.

THE PUBLIC UTILITIES COMMISSION OF OHIO.

BEECHER W. WALTERMIRE,
Chairman;

LAWRENCE K. LANGDON,
LOUIS M. DAY,

Commissioners.

Dated at Columbus, Ohio, This twenty-first day of July, 1916.

A true copy:

_____,
Secretary.

61 District Court of the United States, Northern District of Ohio
Eastern Division.

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,
against

THE NORTHERN OHIO TRACTION AND LIGHT COMPANY and THE
NORTHERN OHIO POWER COMPANY, Defendants.

Amendment to Bill.

Now comes the plaintiff above named and amends its bill of complaint heretofore filed herein in the following particulars, to-wit:

First. By adding at the end of paragraph Tenth of said bill the following:

"As appears from said Exhibit B, the consideration paid by said Traction Company for said property, rights, and franchises of said Northern Ohio Power Company was the cancellation of an indebtedness due by said Power Company to said Traction Company for moneys advanced by said Traction Company for the purpose, among other things, of constructing the dam and power plants hereinafter in paragraph Twelfth more particularly described.

62 "Prior to said last mentioned purchase and sale and on or about February 2, 1912, said Traction Company applied to the Public Service Commission of Ohio (the predecessor of said Public Utilities Commission of Ohio) for authority to issue its cumulative preferred stock of the par value of \$2,000,000, the proceeds to be used in part in the acquisition and construction of said dam and power plants hereinafter in paragraph Twelfth more particularly described; and upon said application said Public Service Commission on or about April 23, 1912, made an order a copy of which is hereto annexed marked Exhibit E and hereby made part of this bill. The property, construction and facilities set out in the exhibits referred to in said order, Exhibit E, include and largely consists of the dam and power plants hereinafter in paragraph Twelfth more particularly described. Subsequent to the making of said order, and under color of authority thereof, said Traction Company issued the securities mentioned therein and the proceeds thereof were largely, if not wholly, used by said Traction Company in the acquisition and construction of said dam and power plants as herein set forth; and the defendants assert and claim the orders of said Public Service Commission and said Public Utilities Commission hereinabove mentioned as authority for the acquisition, construction and use of said dam and power plants by them as herein set forth.

"Said orders Exhibits C and E give the color, form, and appearance of State authority for the acquisition of the parcels of land hereinabove mentioned, the construction of said dam and power plants, and the use thereof by the defendants, as herein set forth,

63 despite the prior grant and franchise of the plaintiff; and said orders are unconstitutional and void because authorizing an impairment of the plaintiff's contract and a taking of its property without due process of law."

Second. By changing paragraph 3 of the prayer of said bill so as to read as follows:

"That the various acts and proceedings hereinabove complained of as violating the plaintiff's rights under the Constitution of Ohio and the Constitution of the United States and the amendments thereof, and the statutes and laws under color of which the defendants are doing said acts and taking said proceedings, including particularly each and all the orders of the Public Service Commission and Public Utilities Commission of the State of Ohio herein set forth, be adjudged and declared unconstitutional and void because resulting in an impairment of the obligations of the plaintiff's said contracts with the State and a taking of the plaintiff's property without due process of law."

THE CUYAHOGA RIVER
POWER COMPANY,
By CARROLL G. WALTER,
Its Solicitor.

64 EXHIBIT E.

134.

In the Matter of the Application of THE NORTHERN OHIO TRACTION AND LIGHT COMPANY for Authority to Issue \$2,000,000.00, par Value, Cumulative Preferred Capital Stock. Approved April 23, 1912.

Finding and Order.

The Northern Ohio Traction and Light Company, a corporation incorporated and organized under the laws of Ohio, having, on the second day of February, 1912, filed its petition for authority to issue its cumulative preferred capital stock of the par value of two million dollars, the proceeds to be used for the acquisition of property, and construction completion, extension and improvement of its facilities as fully set out in exhibits "A," "B," "C" and "D" attached to said petition, and the hearing of said matter having been fixed for February 19, 1912, at 2 o'clock p. m., and having been heard in part on said day, and the further hearing thereof having been continued from day to day, and said company having, on the 8th day of March, 1912, filed its amended petition reducing the amount to be expended for the purposes therein set out from two million nine hundred and eleven thousand six hundred and twenty-eight dollars and two cents to two million thirty-nine thousand six hundred and twenty dollars, said matter came on this day for final hearing
65 upon the amended petition, the evidence and the exhibits.

After considering the pleadings, hearing the evidence, ex-

amining the exhibits, listening to the arguments of counsel and making such further inquiry and investigation as the Commission deemed proper, and it appearing that the improvements, extensions and betterments, contemplated by the petitioner as fully set out in said exhibits, are proper and necessary for the maintenance and extension of petitioner's service, and that the whole and each and every part thereof should be made, the Commission is satisfied that a portion of the necessary expenditures in making said improvements, extensions and betterments to its property should be raised by the sale of its said cumulative preferred capital stock. It is, therefore,

Ordered, That The Northern Ohio Traction and Light Company be and it hereby is authorized to sell its cumulative preferred capital stock of the par value of one million six hundred and forty thousand dollars (\$1,640,000.00), and that said stock be sold for the best price obtainable and at not less than the par value thereof, it being the opinion and finding of the Commission that the money to be secured from the sale of said cumulative preferred capital stock is reasonably required for the proper purposes of said corporation. It is further

Ordered, That the said Northern Ohio Traction and Light Company devote not less than three hundred and sixty thousand 66 (\$360,000.00) in addition to the amounts raised by the sale of its said cumulative preferred capital stock, to the acquisition of property and the making of improvements, extensions and betterments, as set out in said petition and the exhibits attached thereto, and that said sum of three hundred and sixty thousand dollars be secured and obtained either from an assessment upon the holders of the common stock of said company, or that said sum be taken from the surplus earnings of said company which otherwise, except for the provisions of this order, would be devoted to the payment of dividends upon said common stock. It is further

Ordered, That upon the completion of the power plants now under construction and to be constructed by said company, as set out in said petition and the exhibits, attached thereto, that the original cost of the power plant now in use, amounting to the sum of three hundred and twenty-two thousand dollars (\$322,000.00), be deducted from the capital obligations of said company by the redemption of bonds of the par value of three hundred and twenty-two thousand dollars, due and payable at the time said new power plants are completed or that, if no such bonds are due and payable at said time, that said sum of three hundred and twenty-two thousand dollars be set aside and devoted to the redemption of said bonds of the par value of three hundred and twenty-two thousand dollars when the same shall fall due and become payable. It is further

Ordered, That the proceeds arising from the sale of said cumulative preferred capital stock of the par value of one million 67 six hundred and forty thousand dollars and said sum of three hundred and sixty thousand dollars obtained from an assessment upon the holders of the common stock of said company or taken from the surplus earnings of said company which otherwise would be used in the payment of dividends upon

said common stock, be devoted by the said The Northern Ohio Traction and Light Company to the following purposes, and no other, to-wit:

For the construction and equipment of a power plant	\$1,500,000.00
For double tracking the Akron, Bedford and Cleveland Division of interurban railway between Chittenden's station and Fell's station, and between the northerly limits of Bedford and the southerly limits of Newburg, in all a distance of ten and one-tenth miles...	410,000.00
For the construction of car barns and the construction and equipment of car shops in South Akron.....	250,000.00
For the purchase of thirty-five city cars, fifteen interurban cars and two derrick cars.....	350,000.00
	<hr/>
	\$2,510,000.00

Less amounts credited as follows:

Amount expended on power plant to December 31, 1911.....	\$320,380.00
68 The abandonment of seven and one-half miles of single track on the Akron, Bedford and Cleveland Division now located on public highway and to be charged from income	150,000.00
	<hr/>
	470,380.00

Total expenditure for the acquisition of property, improvements, extensions and betterments under this order.....	\$2,039,620.00
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It is further

Ordered, That the said The Northern Ohio Traction and Light Company *made* verified report to the Commission as follows: Upon the sale of said cumulative preferred capital stock, or any part thereof, the fact of such sale and the amounts realized therefrom, which shall be the largest amounts obtainable and shall not be less than the par value of said stock; at the termination of each and every period of six (6) months from the date of this order, the disposition and use made of the proceeds of the sale of said stock of said company, and use made of the amount obtained from an assessment upon the holders of the common stock of said company or from the surplus earnings of said company as herein set out, setting forth in

69 reasonable detail the purposes to which said sums of money have been divided, and that such report be made until all the proceeds of the sale of said stock and the amount obtained from an assessment upon the holders of the common stock or taken from the surplus earnings of said company have been expended pursuant to this order. It is further

Ordered, That when the said power plants now under construction and to be constructed, as set out in said exhibits, are completed that said fact be reported to the Commission, together with a report of the action of said company in reducing its capital obligations by reason thereof, as herein required. It is further

Ordered, That all the provisions of this order and all the parts thereof be considered interdependent and not separable at the option of said company.

70

Motion to Dismiss the Bill.

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

In Equity. No. 366.

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,

against

THE NORTHERN OHIO TRACTION & LIGHT COMPANY and THE
NORTHERN OHIO POWER COMPANY, Defendants.

Motion to Dismiss.

Defendants severally move to dismiss the bill of complaint for the following reasons appearing on the face thereof:

(1) Want of jurisdiction in this Court in that the matter in controversy does not arise under the Constitution or laws of the United States.

(2) The bill does not state facts sufficient to constitute a valid cause of action in equity against the defendants or either of them.

(3) Plaintiff has a plain, adequate and complete remedy at law.

MATHER & NESBIT,
TOLLES, HOGSETT, GINN & MORLEY,
Solicitors for Defendants.

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Opinion by Killits, District Judge.

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 366. Equity.

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,

vs.

THE NORTHERN OHIO TRACTION & LIGHT COMPANY and THE
NORTHERN OHIO POWER COMPANY, Defendants.

Memorandum.

KILLITS, J.:

The court is hearing a motion to dismiss the bill herein for the reason that the facts therein set up do not entitle the plaintiff to the equitable relief demanded. This is the fourth case in this court involving more or less all the facts attempted to be pleaded in the complaint (Cuyahoga River Power Company v. City of Akron, 210 Fed. 524; 240 U. S. 462; John H. Sears, trustee v. City of Akron and John H. Sears v. Northern Ohio Traction & Light Company, and The Northern Ohio Power Company, numbers 319 and 344, respectively, on the dockets of this court. See, also, C. R. P. C. v. N. R. Co., 244 U. S. 30). It seems unnecessary that we should further extend the litigious literature involving complainant's claims by any other statement of facts now than one necessary to the point to which it seems to us the issues here are narrowed, and upon which the motion should be considered.

The complainant was organized as a corporation in 1908, to develop hydro-electric power upon the Cuyahoga River and to sell and distribute the same to consumers. Its plan involved utilization of the river and its branches in seven or more counties of Ohio, to occupy with its dams and power properties a hundred square miles of territory in a populous part of the state. The scheme was manifestly exceedingly ambitious; one, if carried out, of very great importance to the public, involving the expenditure ultimately of millions of dollars. The interest of the public in the utilization of the natural forces here as fast as they may be employed is a consideration which is of much influence in the determination of the present equities of the complainant and the regard in which its present demands must be held. The principal defendant, The Northern Ohio Traction & Light Company, is a public utility whose corporate rights, to be exercised in some important instances at least in the territory covered by the paper scheme of the complainant, were acquired some years earlier than the date of the incorporation of the complainant. This defendant operates an important electric railway line depending for its power upon electricity which may in part be generated by the employment of the water power which the flow of the Cuyahoga River creates within the limits of complainant's

scheme. While much criticism is offered in the complaint of the manner in which the defendant just named acquired its title to certain riparian tracts which are the specific sites involved in the present controversy, in our judgment there is nothing stated which materially affects that title as a title in fee, nor is there anything stated other than the claims insisted upon by the complainant which militates against the right of the defendant named to use the lands involved in this controversy as that defendant is now using them, namely, for the purpose of employing the water power existent upon them for hydro-electric purposes and as the site of an electric producing plant.

73 The parcels of land involved here, three in number but as we understand the complaint, contiguous to each other, involve the bed and banks of the Cuyahoga River at the lower end of complainant's proposed improvement, and as alleged, and of course conceded by the motion, are so situate that complainant's proposed improvement cannot be entirely completed without their appropriation. Shortly subsequent to the incorporation of complainant, a specific and detailed plan for the development of hydro-electric power, particularly describing, among others, lands here involved, was adopted and the improvement located by a resolution declaring the lands necessary and essential to carry out the purposes of the organization, but the complaint does not state that effective steps have been taken to secure to the owners of the properties involved in this action compensation for the appropriation of these parcels.

Until 1914, the improvements upon the parcels now owned by the Traction Company were of minor importance, but in that year the defendant named erected thereon dams and substantial buildings involving very large expenditures, by means of which is generated electric power for the operation of the Traction Company's Railroad from Cleveland to Akron and extended points, and of certain street railroads by it controlled. In 1916, this action was brought for the purpose of enjoining the Traction Company from using these improvements upon the theory that their continued use works to impair what the complainant terms a contract enjoyed by it with the State of Ohio because of its incorporation. So far it does not appear that the complainant has done much for the public by way of improving the water power of the river and its tributaries as provided by its

74 charter and particularly it does not appear that it has taken any steps in the way of improvement near the properties of the defendant Traction Company particularly described in the complaint, or that any of its operations are interfered with in any practical way by defendant's use of its property.

The contention of the plaintiff is that by virtue of its charter, it has appropriated the potentialities of the river and its tributaries within the boundaries by it designated in its resolution of improvement, and that it is entitled, because of its incorporation under the general laws of the State, to exclude any use of the water power of these streams of the nature of the use which it anticipates enjoying in the future while it proceeds, however, dilatorily, to make its improvements in detail and to complete its ambitious scheme. In brief, its proposition is that its charter is equivalent to a contract with the

State of Ohio giving it the exclusive right to the employment of the benefits which nature has conferred upon the public through the forces of these streams to the end that, until it finds itself able to completely occupy all the territory which it has privately designated to be necessary for its use, the public shall not have the advantage of any portion not immediately occupied by it through the employment of the resources thereof by another public utility company.

This is the controlling question of this case and we approach its solution as proposed by the motion to dismiss with the thought that we have to consider that the matter of public convenience is a large criterion in a determination of just what equities are enjoyed by the complainant.

Passing the speculation as to what the complainant might be able to do hereafter in the act of developing its whole scheme by ousting the Traction Company from its property and depriving the defendant of the use of the water power now enjoyed by it through appropriation proceedings, upon which proposition we venture no

75 opinion whatever, it seems to us very clearly that it is against public policy to accede to complainant's views of its immediate rights and to say without complainant that its charter gives it a right to prevent any land owner within the territory which it has determined to eventually occupy to use his lands in any proper way for public or private purposes, in the absence of a specific acquirement by the complainant through completed condemnation proceedings with compensation paid or secured of those lands. Whatever may be the fact in other jurisdictions depending upon provisions of other constitutions or laws or the constructions thereof by their courts, it is thought by this court that in Ohio the mere charter of a company for the utilization of natural resources for the public benefit does not constitute a definite and excluding contract for the use of such resources; that in the words of some of the argument here, the complainant acquired nothing more through its charter than a potentiality which amplifies into an actual exclusive possession only as it complies with the conditions of the laws of the State to the completion of appropriation proceedings. We concur therefore in the views of this subject expressed by Judge Clarke in the two Sears cases above referred to in his opinions on file in this court in those cases respectively. It is not true in Ohio that the character of complainant gave to it "a vested right seemingly unlimited in time to exclude the rest of the world from its water sheds it chose" simply by declaring by resolution just what territory it hoped in the future to occupy to carry out its purposes. The terms of Section 19, Art. 1, of the Ohio Constitution militates against plaintiff's claim. Until appropriation is completed as provided by the condemnation laws of the State, the Traction Company's right to dominion over its

76 holding is inviolate. *Wagner v. Railway Co.*, 38 O. S. 32. Public convenience entitles the public to the employment of these natural resources as rapidly as demand therefor accrues, not according to the ability of the complainant to put them into public use. Should complainant find in time that it has attempted a larger

scheme than it can execute, it is privileged by the law of the State (General Code, Section 11060) to abandon any portion of its plan. The reciprocal proposition must be true that until it actually acquires a right to use any specific property involved in its general plan, the benefits of the natural resources of that parcel may be given to the public by others if that may be done without interference with what the complainant is already doing. *Ramapo Water Co. vs. New York* 236 U. S. 579.

It is not necessary to determine to grant this motion, whether or not complainant has an adequate remedy at law. It may be that the Traction Company's occupancy of its own properties for the purposes complained of is subordinate to the rights of the complainant, under its charter, but if so, that subordination does not exist until the complainant has completed the steps required by law by which only it has acquired the dominant and exclusive interest. Conceding, without deciding, that it may hereafter so subordinate the rights of the Traction Company to its own right, and, by enforcing the latter, to exclude the Traction Company from its present use of the water power and privileges generated on the latter's own property, pending that time we see no reason why the State of Ohio might not permit the Traction Company to convey through the improvement of its own property to the public the favors which nature has there provided.

There seems to us a clear distinction between the facts of this case and cases of the class of the *Binghampton Bridge*, 3 Wall. 51, and *Hamilton, G. & C. Traction Company v. Hamilton & L. Elec. Transit Co.*, 69 O. S. 402. These cases are to be distinguished from the instant case by the fact that in them the question is one of actual and present interference with rights of the corporation in the operative enjoyment of the privileges of its charter.

We are compelled to conclude that there is no equity in complainant's contention respecting the effect of its charter.

The dictation of this memorandum was just concluded when the postman delivered the official copy of the opinion of the Supreme Court, delivered March 4, 1918, affirming the judgment of this court in *Sears v. City of Akron*, above referred to. It would have been sufficient, we think to have made a less extended disposition of the motion here upon the authority of that decision, for therein the principal and controlling contention here offered by the complainant is effectively denied by these words from the opinion of Mr. Justice Brandeis:

"The so-called charter simply conferred upon the company the power to take lands necessary for and to construct thereon, the dams, locks and other parts of its plant. If by purchase or by right of eminent domain under the charter powers, the company becomes the owner of riparian lands, it acquires the riparian rights of former owners; or it may otherwise acquire from the owners specific rights in the use and flow of the water. But these would be property acquired under the charter, not contract rights expressed or implied in the grant of the charter."

The motion to dismiss is allowed to each defendant.

JOHN M. KILLITS,
District Judge.

March 15, 1918.

78 [Endorsed:] No. 366. United States District Court, Northern District of Ohio, Eastern Division. The Cuyahoga River Power Company, vs. The Northern Ohio Traction & Light Company and The Northern Ohio Power Company. Copy of Memorandum. Filed March 15, 1918. B. C. Miller, Clerk.

79 *Decree Appealed From.*

At a Stated Term of the District Court of the United States for the Northern District of Ohio, Eastern Division, held in and for said District, at the Court House thereof, on the — day of March, 1918.

Present: Hon. John M. Killits, District Judge.

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,
against

THE NORTHERN OHIO TRACTION AND LIGHT CO. and the NORTHERN OHIO POWER COMPANY, Defendants.

This cause came on to be heard upon the bill of complaint and amendment thereto and the motion of the defendants to dismiss the same, and was argued by counsel. Thereupon, upon consideration thereof, it is:

Ordered, Adjudged and Decreed, that for the reasons stated in the opinion of the Court filed herein on March 15, 1918, said bill of complaint be and the same hereby is dismissed.

Enter,

JOHN M. KILLITS,
U. S. D. J.

(Filed March 23, 1918.)

80 *Petition for and Allowance of Appeal.*

District Court of the United States, Northern District of Ohio, Eastern Division.

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,
against

THE NORTHERN OHIO TRACTION AND LIGHT CO. and the NORTHERN OHIO POWER COMPANY, Defendants.

The above named plaintiff, feeling itself aggrieved by the decree entered herein on the — day of March, 1918, dismissing the bill of complaint herein, does hereby appeal from said decree to the Su-

preme Court of the United States and prays that its appeal may be allowed, and that a citation may issue directed to the defendants above named, and that a duly authenticated transcript of the record and proceedings upon which said decree was made may be transmitted to said Supreme Court of the United States.

Dated March —, 1918.

CARROLL G. WALTER,
Solicitor for Plaintiff.

Now on this — day of March, 1918, it is

Ordered that the foregoing petition for appeal be and it hereby is allowed, and that a citation be issued as prayed for, and that the Clerk certify the records and proceedings according to the prayer of said petition, bond to be given in the sum of \$250.00.

JOHN M. KILLITS,
United States District Judge.

(Filed March 23, 1918.)

81

Assignment of Errors.

District Court of the United States, Northern District of Ohio,
Eastern Division.

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,
against

THE NORTHERN OHIO TRACTION AND LIGHT CO. and the NORTHERN
OHIO POWER COMPANY, Defendants.

Now comes the plaintiff above named and presents with its accompanying petition for appeal from the decree entered herein on the 23rd day of March, 1918, dismissing the bill of complaint herein, the following assignment of errors, upon which it will rely upon its appeal from said decree, to-wit:

1. The Court erred in granting the defendants' motion to dismiss the bill of complaint.

2. The Court erred in refusing to hold that by its incorporation a contract was duly made and entered into between the State of Ohio and plaintiff, wherein and whereby said state duly granted to the plaintiff a right-of-way over and along the Cuyahoga River between the termini mentioned in the plaintiff's certificate of incorporation, and a vested right and franchise to construct, maintain and operate, within the limits of said right-of-way, a hydro-electric plant for the development of electrical current and energy from the waters of said river, together with the right or franchise of exercising the state's power of eminent domain in order to appropriate and acquire all property necessary to carry out and perform said grant, and make the same effective.

3. The Court erred in refusing to hold that by its resolutions set forth in the complaint, the plaintiff definitely located its proposed

improvements upon specifically described parcels of land, and by such location acquired a prior and exclusive right to take, occupy and use the lands and waters covered by said location for the purposes expressed in the plaintiff's charter, and that such right is a contract right and a right of property, the title, possession, use and enjoyment of which are protected from impairment or deprivation by Section 10 of Article I of the Constitution of the United States and the Fourteenth Amendment to said Constitution.

4. The Court erred in refusing to hold that the acts and proceedings of the defendants set forth in the bill and the orders of the Public Service Commission of Ohio and Public Utilities Commission of Ohio, set forth in the bill, constitute an impairment of the obligation of the contract, grant, and franchise of the plaintiff, in violation of Section 10 of Article I of the Constitution of the United States, and a taking and deprivation of the property of the plaintiff in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

5. The Court erred in refusing to hold that the claims and assertions of the defendants, with respect to the character and effect of their acquisition and use of the parcels of land and water rights set forth in the bill, and with respect to the right of the plaintiff to condemn or appropriate said lands and water rights, constitute a cloud upon the plaintiff's title to its said contract, grant and franchise, and that by reason of said claims and assertions being
83 made under an assertion of power from the State and under color of authority of State laws, the placing of said cloud upon the plaintiff's title constitutes an impairment of its contract and a taking of its property in violation of Section 10 of Article I of the Constitution of the United States and of the due process clause of the Fourteenth Amendment thereto.

6. The Court erred in refusing to hold that the plaintiff had, and has, all the rights, titles, privileges, powers and franchises set forth in the bill, and in refusing to hold that the acts and proceedings of the defendants complained of in the bill constitute such a material interference with the plaintiff's title, possession, use and enjoyment of said rights, titles, privileges, powers and franchises as entitles the plaintiff to the equitable relief prayed for in the bill.

7. The Court erred in holding that any of the corporate rights of the defendant, the Northern Ohio Traction and Light Company, the exercise of which is complained of in the bill, were acquired earlier than the date of the incorporation of the plaintiff.

8. The Court erred in holding that in Ohio the mere charter of a company for the utilization of natural resources for the public benefit, does not constitute a definite and excluding contract for the use of such resources.

9. The Court erred in holding that under the law of Ohio the plaintiff is privileged to abandon any portion of its corporate franchises at will.

10. The Court erred in refusing to hold that upon the facts alleged in the bill, the plaintiff was entitled to relief.

84 Wherefore, and for various other reasons, the said plaintiff prays that the said decree may be reversed and that the District Court of the United States for the Northern District of Ohio, Eastern Division, be directed by the mandate of the Supreme Court of the United States, to enter a decree denying the defendants' motion to dismiss the bill, and adjudging that the bill sets forth a valid cause of action in equity, arising under the constitution of the United States; and for such other, further and general relief, as to the Court may seem proper.

Dated March —, 1918.

CARROLL G. WALTER,
Solicitor for Plaintiff.

(Filed March 23, 1918.)

85

Citation.

UNITED STATES OF AMERICA, *ss:*

To The Northern Ohio Traction and Light Co. and The Northern Ohio Power Company:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, within thirty (30) days from the date hereof, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Northern District of Ohio, Eastern Division, wherein the Cuyahoga River Power Company is appellant, and you are appellees, to show cause, if any there be, why the decree in said appeal mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 23rd day of March, in the year of our Lord one thousand, nine hundred and eighteen.

JOHN M. KILLITS,
United States District Judge.

Service of the foregoing citation, together with a copy of the petition for, and an allowance of the appeal therein referred to, and the assignment of errors accompanying the same, is hereby admitted this 3rd day of April, 1918.

TOLLES, HOGSETT, GINN & MORLEY,
MATHER AND NESBITT,
Solicitors for Defendants.

Filed Mar. 23, 1918, at — o'clock — M. B. C. Miller, Clerk U. S. District Court, N. D. O.

86 [Endorsed:] District Court of the United States for the Northern District of Ohio, Eastern Division. The Cuyahoga River Power Company, Plaintiff, against The Northern Ohio Traction and Light Company and The Northern Ohio Power Company, Defendants. Citation.

87 *Stipulation as to Record.*

District Court of the United States, Northern District of Ohio,
Eastern Division.

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,
against

THE NORTHERN OHIO TRACTION & LIGHT COMPANY and THE
NORTHERN OHIO POWER COMPANY, Defendants.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled suit as agreed on by the parties.

Dated April 3, 1918.

CARROLL G. WALTER,
Solicitor for Plaintiff.
TOLLES, HOGSETT, GINN & MORLEY,
MATHER & NESBITT,
Solicitors for Defendants.

88 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Northern District of Ohio,
Eastern Division, ss:

THE CUYAHOGA RIVER POWER COMPANY, Plaintiff,
against

THE NORTHERN OHIO TRACTION & LIGHT COMPANY and THE
NORTHERN OHIO POWER COMPANY, Defendants.

NORTHERN DISTRICT OF OHIO, ss:

I, B. C. Miller, Clerk of the United States District Court, within and for said District, do hereby certify that the foregoing is a full, true and correct transcript of the final record in the above entitled cause, in accordance with the stipulation of the parties herein.

There is also annexed to and transmitted with such record, the original citation issued and allowed in this cause.

In testimony whereof, I have hereunto signed my name and affixed the seal of said Court at Cleveland in said District, this 20"

day of April, A. D. 1918, and in the 142nd year of the Independence of the United States of America.

[Seal of the District Court, Northern District of Ohio.]

B. C. MILLER,

Clerk,

By A. H. ELLIOTT,

Deputy Clerk.

Endorsed on cover: File No. 26,479. N. Ohio D. C. U. S. Term No. 102. The Cuyahoga River Power Company, appellant, vs. The Northern Ohio Traction and Light Company and The Northern Ohio Power Company. Filed May 1st, 1918. File No. 26,479.

